

Office of Chief Counsel  
Internal Revenue Service

**memorandum**

CC:LM:NR:DEN:TL-N-1257-01

VLHamilton

date: **JUN 27 2007**

to: LMSB Examination, Omaha  
Attn: Paul Taylor

from: Acting Associate Chief Counsel (LMSB), Denver

---

subject: [REDACTED] -- [REDACTED] Statute Extension

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the I.R.S. recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to I.R.S. personnel or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on the I.R.S. and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

**ISSUES**

1. What is the recommended procedure to extend the statute of limitations of [REDACTED] in [REDACTED], a year the partnership was a TEFRA partnership.

2. What is the recommended procedure to extend the statute of limitations of [REDACTED] in [REDACTED], a year the partnership was not a TEFRA partnership.

### FACTS

Please see the attached copy of the ownership structure of [REDACTED] in [REDACTED] and [REDACTED].

In [REDACTED], [REDACTED] was a TEFRA partnership jointly owned by [REDACTED] and [REDACTED]. Both were general partners. [REDACTED] was the designated TMP in [REDACTED]. [REDACTED] was not a TEFRA partnership in [REDACTED]. [REDACTED] (hereinafter "[REDACTED]") was the parent of [REDACTED] in [REDACTED] and [REDACTED] and continues to be so today. In [REDACTED], [REDACTED] was the TMP of [REDACTED].

At the end of [REDACTED], [REDACTED] converted to [REDACTED]. This was done by exchanging the stock of [REDACTED] for the partnership interests. With this action, [REDACTED] is deemed to have liquidated.

On [REDACTED], [REDACTED] was transferred to [REDACTED] as follows. [REDACTED] transferred its interests in [REDACTED] and its interest in [REDACTED] to [REDACTED]. [REDACTED], the parent of [REDACTED] and [REDACTED], itself, jointly indemnified [REDACTED] for, among other things, any tax liability attributable to any period ending on or before the date of transfer. The consideration paid for these transfers was \$ [REDACTED]. [REDACTED] is a wholly owned subsidiary of [REDACTED] (hereinafter [REDACTED]). [REDACTED] also transferred its interests in [REDACTED] to [REDACTED] on [REDACTED].

[REDACTED] continues to exist. For tax purposes, however, it is a tax disregarded entity. For purposes of this advice, we are assuming that [REDACTED] is also a tax disregarded entity.

### ANALYSIS

#### LAW

Section 6229(b)(1)(B) provides that the statute may be extended with respect to all partnerships by an agreement between the Secretary and the tax matters partner or any other person authorized by the partnership in writing to enter into such agreement. Section 6230 provides that a tax matters partner of any partnership is (a) the general partner designated as the tax

matters partner as provided in the regulations. Section 6231(a)(7) provides that in the absence of a valid election, the general partner with the largest profits interest becomes TMP by operation of law.

Treas. Reg. § 301.6321(a)(7)-1(b) provides that a person may be designated as the TMP of the partnership only if that person was a general partner in the partnership at some time during the taxable year for which the designation is made. Treas. Reg. § 301.6231(a)(7)-1 provides for the designation or selection of the TMP. Specifically, this regulation at (e) provides the procedure for a partnership selecting a TMP after the return was filed by filing a statement with the service center. The statement must identify the partnership and the designated partner by name, address and TIN, specify the partnership taxable year to which the designation relates, declare that it is a designation of a TMP for the taxable year specified and be signed by persons who were general partners with the majority interest at the close of the year at issue. Treas. Reg. § 301.6231(1)(7)-1(e)(4).

Treas. Reg. § 301.6231(a)(7)-1(l)(1) provides that the designation of a tax matters partner for a taxable year shall remain in effect until, as relevant here, the liquidation or dissolution of the TMP, if it is an entity. Treas. Reg. § 301.6231(a)(7)-1(m)(2) provides for the general partner having the largest profits interest to be the TMP. If there is more than one such partner, as in our case, then the TMP shall be the partner whose name appears first alphabetically. This determination is made based on the year-end profits interest reported on Schedules K-1. For purposes of determining the partner with the largest profits interest, a dissolved general partner should be treated as having a zero interest. Treas. Reg. § 301.6231(a)(7)-1(m)(3).

Treas. Reg. § 301.6231(a)(7)-1(p)(1) provides for the Commissioner to select the TMP when the largest profits interest of paragraph (m)(2) is not apparent. The Commissioner will select in accordance with the procedures at Treas. Reg. § 301.6231(a)(7)-1(r) any person who was a general partner at any time during the taxable year under examination.

Treas. Reg. § 301.6229(b)-1 provides that if there is no tax matters partner, the partnership may authorize any person to extend the statute by filing the following statement with the service center where the partnership return is filed. Specifically, the statement must (a) provide that it is an authorization for a person other than the TMP to extend the assessment period with respect to all partners; (b) identify the

partnership and the person being authorized by name, address, and taxpayer identification number; (c) specify the partnership taxable year or years for which the authorization is effective, and (d) be signed by all persons who were general partners at any time during the year or years for which the authorization is effective.

Treas. Reg. § 1.1502-77 provides that, as relevant to this case, the parent of a consolidated group has the authority to bind all members of the group for purposes of extending a statute of limitations for a consolidated year.

### DISCUSSION

#### Issue 1

The first issue involves the determination of the proper person to sign the statute extension for [REDACTED] in [REDACTED], a year it was a TEFRA partnership. In [REDACTED], [REDACTED] had two general partners, each with a 50 percent interest in the partnership. [REDACTED] was the designated TMP. This company, however, no longer exists because it liquidated. In [REDACTED], it converted from a corporation into a limited partnership, which conversion resulted in a deemed liquidation. With such liquidation, [REDACTED]'s designation as the TMP of [REDACTED] for the [REDACTED] year ceased, Treas. Reg. § 301.6321(a)(7)-1(l)(iii), and it cannot sign the statute extension for [REDACTED]. Under these circumstances, we recommend the following.

We recommend that the parents of [REDACTED], [REDACTED], and [REDACTED] all sign a Form 872-I, statute extension for [REDACTED] for [REDACTED].<sup>1</sup> The 872-I is designed to extend the period for assessing partnership items for all members of the group for all TEFRA partnerships that the group has invested in. It also extends the non-TEFRA statute for all members of the group. In the event that the taxpayer parent is unwilling to sign the Form 872-I, you can modify a regular Form 872 or 872-I to limit the consent to [REDACTED].

An authorized person should execute the Form 872-I, or

---

<sup>1</sup> We recommend that all three parents sign the form as we do not know whether [REDACTED] is a successor under state law to [REDACTED]. Furthermore, assuming that [REDACTED] is the successor, we are unsure of the effect of the sale of the disregarded entity, [REDACTED], from [REDACTED] to [REDACTED].

modification thereof, for [REDACTED] "as parent of [REDACTED] and as agent for the other entities of the consolidated group other than the partner." An authorized person should execute the same form for [REDACTED] "as parent of [REDACTED], successor in interest to [REDACTED], and as agent for the other entities of the consolidated group other than the partner." Finally, an authorized person should execute the form for [REDACTED] "as parent of [REDACTED], successor in interest to [REDACTED], and as agent for the other entities of the consolidated group. This would bind both partners and all members of the three consolidated groups. Treas. Reg. § 1.1502-77.

In the absence of a valid election, the general partner with the largest profits interest becomes TMP by operation of law. Section 6231(a)(7). For this purpose, a dissolved general partner should be treated as having a zero interest. Treas. Reg. § 301.6231(a)(7)-1(m)(3) (last sentence). As this latter regulation only addresses a termination of a "designation" under paragraph (m) (which does not cover the instant case), and (m) only determines default TMP's, strictly speaking, this regulation would not apply to a regular designation terminated by a liquidation. Nevertheless, case law would indicate this same result even absent the application of the regulation. Barbados v. Commissioner, 92 T.C. 804 (1989). So, [REDACTED] would be the default TMP. Thus, [REDACTED] would be the TMP under the largest profits interest rule for notice purposes. Further, the courts have allowed generic notices (Chomp v. Commissioner, 91 T.C. 1069 (1988)), so it is not critical to have a TMP even for notice purposes.

Based on the analysis that [REDACTED] is the default partner of [REDACTED], we also recommend, as a precaution, that [REDACTED] and its parent, [REDACTED], execute a Form 872-P for [REDACTED]. [REDACTED] would sign as partner of [REDACTED], and [REDACTED] "as parent of [REDACTED] and as agent for the other entities of the consolidated group other than the partner." This is necessary as the parent and the other members of the group are severally liable for the tax attributable to the partnership items of the partner and are bound by the actions of the TMP.

#### Alternative for [REDACTED] year

In the event you wish to ensure against any notice issues, you may use, in addition to the above described procedure, the more complex designation procedure. Please note that we do not believe that this alternative procedure is necessary in this

case.

Under this alternative, the Form 872-P would be signed either by a new TMP of [REDACTED] or by an authorized person. Either entity must be formally designated by the partnership. Under these circumstances, the partnership could either appoint a new partner under Treas. Reg. § 301.6321(a)(7)-1(e) or appoint an authorized person under Treas. Reg. § 301.6229(b)-1, or the Commissioner could appoint a new TMP under Treas. Reg. § 301.6321(a)(7)-1(r), the latter being a time consuming process.

As [REDACTED] was the only other general partner in [REDACTED] other than [REDACTED] (and as it would be the default TMP as explained under Issue 1), we recommend the partnership designate [REDACTED] as the [REDACTED] TMP under Treas. Reg. § 301.6321(a)(7)-1(e). To accomplish this, the statement as described in Treas. Reg. § 301.6321(a)(7)-1(e) should be submitted to the service center. This designation should be signed by an authorized person of [REDACTED] as general partner.

Also, an authorized signature for [REDACTED] is needed. As it no longer exists, the current general partner of [REDACTED], as successor in interest to [REDACTED], should execute the new TMP designation on behalf of [REDACTED]. Also, an authorized person for [REDACTED], as successor in interest to [REDACTED], successor in interest to [REDACTED], should join in the designation of the new TMP. After such designation, [REDACTED] would then sign the 872-P as TMP. The 872-P should also be signed by an authorized person of [REDACTED] as "parent of [REDACTED] and as agent for the members of the consolidated group other than the partner."

If [REDACTED] is not willing to be the designated TMP, the partnership can authorize another person to so act under Treas. Reg. § 301.6229(b)-1. The required signatures for such authorization would be as described above.

## Issue 2

[REDACTED] was not a TEFRA partnership for the [REDACTED] year. Consequently it is necessary for each partner to sign a statute extension, Form 872. We recommend that you obtain Forms 872 from [REDACTED] and [REDACTED]. No other signatures are required to be on the forms.


Each parent should sign as parent of the respective partner

( [REDACTED] for [REDACTED], and both [REDACTED] and [REDACTED] for [REDACTED] ) with the language as proposed under Issue 1.

If you have any questions on this matter, please do not hesitate to contact us.

DAVID J. MUNGO  
Associate Area Counsel (LMSB)

By: \_\_\_\_\_

  
VIRGINIA L. HAMILTON  
Attorney (LMSB)

Attachments  
As stated